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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/657,323	09/08/2003	John Gano III	80710-1016	1193

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EXAMINER

JIANG, CHEN WEN

ART UNIT	PAPER NUMBER
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3744

DATE MAILED: 07/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/657,323

Applicant(s)

GANO ET AL.

Examiner

Chen-Wen Jiang

Art Unit

3744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6,8-28,30 and 31 is/are rejected.
- 7) ☒ Claim(s) 7 and 29 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>20030922</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1,2,3,9-20,21,22,23,24,25,26,27,28,30 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abbott (U.S. Patent Number 5,291,746) in view of Kluth et al. (U.S. Patent Number 4,508,853 and 4,742,087).

In regard to claims 1-3, Abbott discloses a container for storage, collection and transportation materials. Referring to Figs.2-4, the container 10 comprises an outer box 11 and a lid 12. The outer box 11 inner walls and bottom are insulated with insulated material 23. The lid 12 contains refrigeration unit 90. Insulation 23 may be selected from fibrous (such as fiberglass), or solid (such as cork) or foam polymer (such as foam-in-place polyurethane) which will provide thermal Insulation for circulating air in box 21. However, Abbott does not disclose bio-based polyurethane for insulation material. Kluth et al. disclose polyurethane based on oleochemical polyols in the same field of endeavor for the purpose of making container. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the apparatus of Abbott with polyurethane based on oleochemical polyols materials in view of Kluth et al. so as to make container.

In regard to claims 9-20, Kluth et al. disclose suitable oleochemical polyols can be produced from the following fats and oils (in order of their starting iodine number): beef tallow, vegetable oil, palm oil, lard, castor oil, peanut oil, rapeseed oil and, preferably, cottonseed oil, soya bean oil, train oil, sunflower oil and linseed oil.

In regard to claims 21,22,23,24,25,26,27,28,30 and 31, under the principals of inherency, if a prior art device, in its normal and usual operation, would necessarily perform the method claimed, then the method claimed will be considered to be anticipated by the prior art device. When the prior art device is the same as a device described in the specification for carrying out the claimed method, it can be assumed the device will inherently perform the claimed process. *Irre King*, 801 F.2d 1324, 231 USPQ 136 (Fed. Cir. 1986).

3. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Abbott and Kluth et al. as applied to claim 1 above, and further in view of Reaves et al. (U.S. Patent Number 5,009,326).

Abbott and Kluth et al. disclose the invention substantially as claimed. However, Abbott and Kluth et al. do not specify the outer wall comprises cardboard. Reaves et al. disclose a cardboard outer wall in the same field of endeavor for the purpose transport. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the apparatus of Abbott and Kluth et al. with a cardboard outside wall in view of Reaves et al. to transport the item.

4. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Abbott and Kluth et al. as applied to claim 1 above, and further in view of Hirayama et al. (U.S. Patent Number 5,031,418) or Murray et al. (U.S. Patent Number 5,966,962).

Abbott and Kluth et al. disclose the invention substantially as claimed. However, Abbott and Kluth et al. do not disclose the temperature control material comprises a super-absorbent. Hirayama et al. and Murray et al. disclose a super absorbent material in the same field of endeavor for the purpose of providing cooling. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the apparatus of Abbott and Kluth et al. with a super-absorbent material in view of Hirayama et al. and Murray et al. as cooling material.

Double Patenting

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 1-6,8-28,30 and 31 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 5,8,9,16,21-27,32-38,45-60 of U.S. Patent No. 6,698,231 in view of Carter (U.S. Patent Number 3,811,559). '231 claimed a container comprises an outer shell, insulation material having bio-based polystyrene and temperature-maintaining material. Carter discloses polystyrene and polyurethane are used as insulated material for container.

Allowable Subject Matter

7. Claims 7 and 29 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Heggelund (U.S. Patent Number 5,156,111) and Purdum (U.S. Patent Number 5,899,088) are made of record as relevant prior art.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chen-Wen Jiang whose telephone number is (703) 308-0275. The examiner can normally be reached on Tuesday-Friday from 7:00 to 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Denise Esquivel can be reached on (703) 308-2597. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Chen-Wen Jiang
Primary Examiner

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke, positioned to the right of the name and title.